IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 136 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ABU ISMAIL BALOCH - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :

MR MM TIRMIZI for Appellant(s) : 1,
MR KT DAVE, Additional Public Prosecutor for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 23/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K. A. PUJ)

1. Challenge in this Appeal filed under Section 374 of the Code of Criminal Procedure ("the Code" for short) is to the correctness of the judgment and order dated 4.12.2002 rendered in Sessions Case No.10 of 1993 by the learned Additional Sessions Judge, 6rd Fast Track Court Judge, Junagadh, by which the appellant – Abu Ismail Baloch ("the accused" for short) has been convicted for commission of the offence punishable under Section 376, 506 (2) and 342 of the Indian Penal Code ("IPC" for

short) and sentenced to suffer RI for 10 years and fine of Rs.2,000/- and in default thereof, to undergo SI for 1 year for the offence punishable under Section 376 of IPC and SI of 6 months and fine of Rs.500/- and in default thereof SI for 7 days for the offence punishable under Section 506 (2) of the IPC and fine of Rs.75/- and in default thereof to undergo the sentence of SI of 2 days for the offence punishable under Section-342 of the IPC. Both the substantive sentences were ordered to run concurrently.

2. Since the facts of the case have been detailed in the judgment of the learned Additional Sessions Judge, Junagadh, it is not necessary for us to repeat the same all over again in verbatim and in detail in this judgment. However, the basic facts which are necessary to be discussed in this appeal are as under:-

3. On 10.8.1992 at about 9:30 in the morning when the complainant, namely, Ameenaben Umerbhai Shaikh and prosecutrix were at their house, the accused had come in drunken condition. The prosecutrix was the daughter of the complainant from her previous husband. She got married to one Salim at Jamnagar. As he was harassing her, she has returned to her home after 5 to 6 months of marriage. On 10.8.1992 when both the complainant as well as prosecutrix were in the house, the husband of the complainant, namely, Abu Ismail Baloch -accused herein pushed the complainant out of the house and told her to kill if she would say any one about this incident. The prosecutrix was in the house. She was retained in the house and the house was locked from inside. The complainant shouted and went to the house of the neighbour – Saiyedbin, who was working in Railway and residing nearby. The complainant told him

about the incident and she was asked to state the said facts in the Police Station. The complainant thereafter went in the rickshaw to the Police Station. The two police men came to her house from the Police Station, at that time the prosecutrix had narrated the incident stating that her father Abu Ismail – accused herein pushed her and forcibly shut her mouth with plug and raped on her. There was bleeding from her vagina. She started crying. She became so frightened that she could not speak. She was immediately taken to the Government Dispensary and her treatment was going on. Thus, the complainant's husband has committed rape on her daughter, aged about 18 years, from the previous husband against her desire, by shutting her mouth with plug after pushing her out and shutting the door from inside in drunken condition at about 9:30 o'clock in the morning on 10.8.1992 in the Railway Quarter.

4. An FIR with respect to the alleged incident was filed by the mother of the prosecutrix, namely, Ameenaben against the accused at Junagadh Police Station, where it was registered vide CR No.I-55 of 1992 for commission of the offence punishable under Sections-376, 504, 506(2) and 342 of the IPC.

5. After registration of the complaint, investigation was put into motion. Panchnama of the scene of offence was drawn. Statement of the witnesses were recorded. Clothes of the prosecutrix as well as accused were recovered and sent for FSL for chemical analysis. On receipt of the report from FSL, as sufficient incriminating evidence was found against the accused for commission of the offence of committing rape with the prosecutrix, a charge-sheet was filed against the accused for commission of offence punishable under Sections 376, 506 (2), 504

and 342 of IPC in the Court of learned Judicial Magistrate First Class at Junagadh.

6. As the offence under Sections 376, 506 (2), 504 and 342 of IPC is exclusively triable by the Court of Sessions, the learned JMFC, Junagadh committed the case to the Sessions Court, Junagadh.

7. The learned Additional Sessions Judge, Junagadh to whom the case was made over for trial, framed charge against the accused for commission of the offence punishable under Sections 376, 506 (2), 504 and 342 of IPC. The charge was read over and explained to the accused. As the accused pleaded not guilty to the charge, he was put to trial and tried by the learned Additional Sessions Judge, Junagadh in Sessions Case No. 10 of 1993.

8. In order to bring home the charge levelled against the accused, the prosecution has, in

all, examined as many as 11 witnesses, the details of which have been given in paragraph 3 of the impugned judgment and order and the same are as under :-

Sr.No.	Particulars	Exh.No.	Page No.
1	P.W No.1 – Dr.Jadavbhai Jerambhai Adhera.	13	29 to 30
2	P.W No.2 – Ameenaben Abu Ismail Baloch.	17	34-36
3	P.W No.3 – Saiyedbin Kaderbhai.	19	40-41
4	P.W No.4 – Vali Mahammedbhai.	20	42
5	P.W No.5 – Batukbhai Chanabhai.	22	46-47
6	P.W No.6 – Virjibhai Chhaganbhai.	23	48-49
7	P.W No.7 – Prosecutrix.	24	50-51
8	P.W No.8 – Sureshbhai Parsottambhai.	25	52-53
9	P.W No.9 – Nagarsinh Virsinh.	26	54-55
10	P.W. No.10 – Dr.Govindji Muljibhai Makwana.	33	66-67
11	P.W. No.11 – Siddiqmiya Hussenmiya.	47	89-91

9. To prove the culpability of the accused, the prosecution has also produced number of documents and relied upon the contents of the same, details of which, enumerated in

paragraph 3 of the impugned judgment and order, are as under :-

Sr.No.	Type of Evidence	Exh.No.	Page No.
1	Charge.	1	10-11
2	FIR.	28	57-60
3	Extract from the Station Diary.	29	61
4	Extract from the Entry No.9/92 from the Station Diary.	30	62
5	FSL Resport.	42	79-80
6	Serological Report.	43	81
7	FSL Report.	45	83-86
8	Serological Report.	46	87-88
9	Panchnama.	48	92-93

10. After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge, Junagadh, explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the

prosecution in its entirety and submitted that he has been falsely implicated in the offence alleged against him. However, he did not lead any evidence nor did he examine any witness in support of his defence.

11. On appreciation, evaluation, analysis and scrutiny of the evidence, the learned Additional Sessions Judge, Junagadh came to the conclusion that the accused has committed an offence punishable under Section 376, 506 (2) and 342 of IPC. He however has acquitted the accused from the charge of offence punishable under Section-504 of IPC. On the basis of the said finding, the learned Additional Sessions Judge, Junagadh has convicted the accused for commission of the offence punishable under Section 376 IPC and sentenced him to suffer RI of 10 years and fine of Rs.2,000/- and in default of payment of fine, SI for 1 year, and also awarded

sentence of S.I. Of 6 months with fine of Rs.500/- and in default thereof, S.I. of 7 days under Section 506 (2) of IPC and fine of Rs.75/- and in default thereof SI for 2 days, under Section-342 of IPC which has given rise to the instant appeal at the instance of the accused.

12.Mr. M.M.Tirmizi, learned advocate appearing for the accused has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Additional Sessions Judge, Junagadh. He has further submitted that the learned Additional Sessions Judge, Junagadh has erred in convicting the accused though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Additional Sessions Judge, Junagadh has failed to appreciate that the appellant is

innocent and has not committed the alleged offence. He has further submitted that the evidence pressed into service by the prosecution is untrustworthy, unreliable and can never form basis of conviction.

13. At the out set, he has raised the first contention that the prosecution version is highly improbable and in the background of the facts of the present case, it is clearly indicated that there was false implication of the accused. He has further submitted that considering the contradictions in the evidence of the witnesses with their police statements, this is the case of false implication of the accused. As per the evidence of the prosecutrix (P.W.-7, Ex.24) she deposed in para-2 of the testimony that when the accused had come in the house the complainant, namely, Ameenaben was not present in the house. However, as per the evidence of the complainant (P.W.2, Ex.17) in

para-2 of her evidence she stated that she was pushed out by the accused when the accused came in drunken condition. Therefore, there is clear contradiction between the evidence of prosecutrix and that of the complainant regarding presence of complainant at the time of alleged offence. He has, therefore, urged that the prosecution has failed to establish its case to sustain the order of conviction beyond reasonable doubt and the evidence of above important witnesses are not reliable so as to hold that the accused is guilty. He has further submitted that the prosecutrix has stated in para-2 of her testimony that the accused had threatened her by showing knife. However, in her cross-examination in para-3 she admitted that this fact has not been recorded in her police statement and she further admitted there was no attack made by the accused. He has further submitted that the prosecutrix has deposed in para-2 of her evidence that the

accused had put his four fingers in her private part and had made attempt to have sexual intercourse with her. She further stated in her cross-examination that the accused had not done anything except putting his fingers in her private part. This fact is also corroborated by the evidence of medical officer, namely, Dr.Jadavbhai Jerambhai Adhera (P.W.1, Ex.13) who has examined the prosecutrix. The doctor has stated in para-3 of his evidence that the injury sustained by the prosecutrix on her private part may be possible by artificial instrument. Even if the evidence of complainant and prosecutrix are to be accepted to some extent, in view of the medical evidence, it does not constitute an offence under Section-376 of IPC. He has, therefore, submitted that in the facts and circumstances of the case it is not enough to implicate the accused in the alleged crime. All the circumstances show that the

investigating agency has falsely roped the accused in the alleged offence. He has, therefore, submitted that the impugned judgment and order passed by the learned Additional Sessions Judge, Junagadh is required to be quashed and set aside and the accused is required to be released forthwith.

14. The second point raised by Mr.Tirmizi is with regard to the evidence of the prosecutrix even if accepted does not prove the commission of rape and the medical evidence also supports such a view. At the most, it can be said that there was an attempt to commit rape but the act was not actually done. He has, therefore, submitted that the sine qua non of the offence of rape is penetration. Putting fingers in the private part of the prosecutrix without penetration constitutes an attempt to commit rape and not actual rape. Definition of “rape” as contained in Section-376 of IPC

refers to “sexual intercourse” and the Explanation appended to the section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection. In the present case that connection has not been established. The evidence of P.W.-7 only reveals that the accused had attempted to rape and put his fingers in her private part and there being no penetration the evidence of P.W.-2, namely, Ameenaben to the effect that she witnessed the alleged offence cannot be accepted. At the most the accused has made an attempt to commit an offence. In that view of the matter, he has submitted that the conviction and sentence to the accused for the offence punishable under Section-376 of IPC cannot be sustained.

15. The last and third point raised by Mr.Tirmizi is with regard to that the accused

was in drunken condition at the time of alleged offence and considering these circumstances it could not have been possible for the accused to commit alleged offence of rape. He has submitted that as per the evidence of P.W-2, namely, Ameenaben, P.W.-3 – Saiyedbin Kaderbhai, P.W.-6 Virjibhai Chhaganbhai, P.W.-7 prosecutrix, P.W.-10 – Dr.Govindji Muljibhai Makwana and evidence of P.W.-11 – Investigating Officer, Siddikmiya Hussainmiya Kadri, all the witnesses have stated in their evidence that the accused was in drunken condition at the time of alleged offence. The doctor, namely, Govindji Muljibhai Makwana has stated in his evidence that it is impossible to do physical intercourse in the drunken condition. In the present case, the learned Additional Sessions Judge, Junagadh has not considered this aspect while deciding the fate of trial. When the evidence of above witnesses are considered in the proper perspective, it is

clear that the commission of actual rape has not been established.

16. Mr.Tirmizi has further submitted that as per the case of the prosecution due to enmity for Rs.80,000/- the accused had attempted to commit rape. However, as per the settled law, enmity is double edged weapon. In fact, the possibility of the prosecutrix making the accused to consume liquor so that his clothes can be removed and a “scene” be created. Since the accused being a step father could not have raped, she inserted some artificial instrument to cause injury in the inner side of the vagina as per the evidence of the doctor – P.W.-1. It was thus, natural for the accused to be found naked as the prosecutrix was determined to implicate the accused.

17. On overall view of the matter and on proper appreciation of the evidence,

Mr.Tirmizi has submitted that there is gross infirmity and illegality in the reasons assigned by the learned Additional Sessions Judge, Junagadh for convicting the accused and, therefore, there is valid reason and justifiable ground to interfere with the impugned order convicting the accused for the offence for which he was charged.

18. In support of his submissions, Mr.Tirmizi has relied on the decisions of the Hon'ble Supreme Court in the case of **Sakshi Vs. Union of India and others, reported in (2004) 5 Supreme Court Cases 518**, wherein it is held that the dictionary meaning of the words "sexual intercourse" is heterosexual intercourse involving penetration of the vagina by the penis. If the hymen is ruptured by inserting a finger, it would not amount to rape.

19. Mr.Tirmizi has further relied on the

decision of the Hon'ble Supreme Court in the case of **Aman Kumar and another Vs. State of Haryana, reported in AIR 2004 Supreme Court 1497**, wherein it is held that it is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particular. She stands at a higher pedestal then an injured witness. In the latter case, there is injury on the physical form, while in the former, it is both physical as well as psychological and emotional. However, if the Court of facts finds it difficult to accept the versions of the prosecutirx on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.

20. Mr.Tirmizi has further relied on the decision of the Hon'ble Supreme Court in the case of **Koppula Venkat Rao Vs. State of Andhra Pradesh, reported in AIR 2004 Supreme Court 1874**, wherein it is held that an attempt to commit an offence is an act, or a series of facts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw or intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation

of the act attempted. The illustrations given in S.511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

21. Based on the aforesaid judgments of the Hon'ble Supreme Court and the evidence which has come on record Mr.Tirmizi has strongly urged that the accused has not committed any offence under Section-376 of the IPC and even if the prosecution version is accepted, it was merely an attempt and actual rape was not committed. The accused therefore at the most should have been convicted for the offence punishable under Section-376 read with Section-511 and in that case, the sentence should have been reduced to one half of the actual sentence awarded to the accused. Since the accused has already undergone the sentence of more than 5 years and 2 months, which is more than the sentence that can be awarded to the accused under Section-376 read

with Section-511 of the IPC, the accused should be ordered to be released forthwith.

22. Mr. K.T. Dave, learned Additional Public Prosecutor, on the other hand, has supported the order and judgment of the learned Additional Sessions Judge, Junagadh and submitted that the prosecution has established the charge levelled against the accused beyond any reasonable doubt. The documentary evidence on the record of the proceedings clearly establish the involvement, presence and role of the accused for the offences charged against him. He has further submitted that despite the fact that the prosecutrix's own version before the Court merely refers to insertion of fingers in her private part she has deposed about the actual penetration in her police statement. The prosecutrix has changed her version to that effect, as it is quite contrary to the statement which she has made before the

police. The learned Additional Sessions Judge, Junagadh has rightly not accepted this part of the deposition of the prosecutrix in view of the deposition of her mother, medical evidence and FSL Report. He has, therefore, submitted that the learned Additional Sessions Judge, Junagadh has discussed at length this aspect of the matter, which is based on correct appreciation of evidence and on sound reasoning, which should not be interfered with by this Court.

23. We have considered the submissions advanced by the learned advocates appearing for the parties at length and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We

have also gone through the entire testimonial collections. We have applied our mind to the judgment and order passed by the learned Additional Sessions Judge, Junagadh, convicting the accused for commission of the offence punishable under Sections 376, 506(2) ad 342 of IPC and sentence awarded to him for this offence, reference of which is already made in earlier part of this judgment.

24. In order to find out whether the prosecution has established the charge against the accused beyond reasonable doubt and whether the learned Additional Sessions Judge, Junagadh has recorded a just and correct conclusion holding the accused guilty, we may first advert to the oral testimony of the prosecution witnesses.

25. P.W.-7 - prosecutrix is examined at Ex.24.

She testified that she and her mother were in the house and at about 8 to 9 a.m when she was about to leave her house for work, the accused entered in the house in drunken condition. He pushed the prosecutrix and compelled her to sleep by showing knife. He used force on her and inserted his four fingers in the private part of the prosecutrix. Her mother has gone to the Police Station, as per the advise of the neighbour and when the police came the prosecutrix as well as the accused were in naked condition. She has further testified that the accused has thrown her on coat, and made an attempt to rape on her. In her cross-examination, she testified that her real father expired and amount of compensation received on the death of his father, was given to the accused by her mother. Her mother was fed up with the accused. She admitted in her cross-examination that the accused has not done

anything except inserting the four fingers in her private part. She has, however, denied that she has herself inflicted injuries in her private part.

26. It appears that the prosecutrix has changed her version and did not admit that the accused has committed rape on her, whereas she has stated this very fact in her police statement. She has also narrated the entire incident before the mother on the basis of which the complaint was filed. Not only that when she was admitted in the hospital, she has given her story before the Medical Officer, wherein also she has stated that the accused has committed rape on her. The Court normally accepts the evidence of the prosecutrix. However, when contradictions are found and the prosecutrix's version goes contrary to her own statement made before the police and other corroborative evidence, in that case the Court is little slow to accept

the evidence of the prosecutrix. Here in the present case, the accused is step father of the prosecutrix and when she gives her evidence before the Court after about 10 years, she might have changed her version about the whole incident. The medical evidence shows that the injuries were found on her private part. The FSL Report as well as serological report clearly establishes that the rape was committed on her.

27. P.W.-1 – Dr.Jadavbhai Jerambhai Adhera is examined at Ex.13. He testified that the prosecutrix was brought before him with the police yadi at about 11:15 in the morning and when he asked the history, she admitted that the rape was committed on her. On her examination, he found various injuries on her private part. He took sample of blood, semen pubic hair. He found that the clothes were stained with blood. In his cross-examination he denied that injury found in the vagina

could be done by insertion of fingers therein. He, however, admits that if any woman is habitual in sex, such injury would not be caused by mere intercourse. He further admits that such injury may be caused by artificial instrument.

28. The FSL Report is produced at Ex.42. The bed was stained with blood and blood was found thereon. Even the shirt of the accused was also stained with blood. Serological report produced at Ex.43 indicates that the blood group is “A”. Another FSL report is at Ex.45. The specimen No.4 is vaginal smear, where semen and blood was found. Even specimen No.7 being frock of the prosecutrix blood stained and semen were found.

29. P.W.-10 - Dr.Govindji Muljibhai Makwana is examined at Ex.33. The accused was brought before him for examination with the police yadi that the accused has committed rape on

the prosecutrix. No injuries were found on the private part of the accused. He has testified that the accused was in a drunken condition and when any person is in a drunken condition he is not competent to make sexual intercourse.

30. The star witness for the prosecution is the complainant – Ameenaben. She is examined at Ex.17. She has testified that the incident took place at about 9:00 o'clock. She and her daughter, the prosecutrix were present in the house and her son have gone to the school. The accused, her husband, has come to the house in the drunken condition and she was driven out. Her daughter was raped in the house and the accused has closed the door from inside. She has gone to the neighbour - Saiyedbin, who advised her to go to the police station to make a complaint regarding rape on her daughter. When she came with the police, she found the accused as well as

prosecutrix in naked condition. Thereafter, she took prosecutrix to the hospital and lodged a complaint. In her cross-examination, she has accepted the whole story and no contradiction was found.

31. P.W.-6 - Virjibhai Chhaganbhai, the Police Constable is examined at Ex.23. He testified that when he and other Police Constable – Mr.Bhimbhai came to the house of the complainant the main door was closed and when he knocked the door the prosecutrix came out and he saw them in naked condition. He also testified that the case of prohibition was filed against the accused.

32. Since the evidence of the prosecutrix is not believed to the extent she says that the accused has merely inserted his fingers in her private part and not raped, it cannot be said that the accused has been falsely implicated. From the circumstantial

evidence, the case of the prosecution gets corroboration. It is difficult to arrive at the conclusion that the accused has merely made an attempt and not actually committed an offence of rape. Even the decision of the Hon'ble Supreme Court in the case of **Aman Kumar and Another (Supra)** on which heavy reliance is placed by Mr.Tirmizi, makes it clear that if the Court of facts finds it difficult to accept the versions of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lead assurance to her testimony. The learned Additional Sessions Judge has done precisely the same thing. He has not believed the evidence of the prosecutrix to some extent and derived support from circumstantial evidence to arrive at the conclusion that the accused has committed rape on the prosecutrix. The doctor's opinion that a drunken person is not competent to do physical intercourse is his

own opinion which has no scientific base. It is nobody's case that the accused was overdozed and lost all his control. Many a times people drink to get stimulation. There is no universal truth as canvassed by Mr.Tirmizi, on the basis of doctor's opinion. This contention is not, therefore, worth acceptable.

33. As against the slight change in the version of the prosecutrix before the Court, evidence of all other witnesses is consistent. It is in consonance with the prosecutrix's statement before the police. Complaint filed by the complainant, her evidence before the Court, story narrated by the prosecutrix before the doctor when she was first admitted in the hospital, injuries on her private parts, FSL and serological reports, doctor's evidence before the Court, police constable's evidence before the Court etc, are capable enough to establish the prosecution case that

the accused has committed rape on the prsecutrix.

34. From the oral as well as documentary evidence the learned Additional Sessions Judge, Junagadh has come to the conclusion that simply because the prosecutrix has not stated in her evidence that the accused has committed rape on her, especially when all other evidence corroborates the prosecution version that the rape was committed, the prosecution case cannot be thrown overboard. The evidence of other witnesses, medical report as well as serological report support the case of the prosecution and on overall appreciation of the oral as well as documentary evidence, it is difficult to believe that the accused has not committed rape on the prosecutrix.

35. The three main points raised by Mr.Tirmizi and the judgments relied upon by him in

support of this submission could not persuade us to take different view then the view taken by the learned Additional Sessions Judge, Junagadh. A minor contradiction here and there would not affect the case of the prosecution. On true and correct appreciation of the evidence, we are not in a position to accept that the accused has merely made an attempt to commit rape and the actual rape was not committed. This submission is based merely on evidence of the prosecutrix, however that is not corroborated by the other evidence which are found on record. Even this evidence is contrary to her own statement made before the police. Such version of the prosecutrix could not inspire the confidence and for the reasons best known to the prosecutrix she has changed her version. Since it is not a case of mere an attempt to commit rape, there is no question of invoking the provision contained in Section-511 of the IPC and in that view of

the matter, the judgments relied upon by Mr.Tirmizi would not render any assistance.

36. On close scrutiny of the evidence on record, we find no infirmity in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the learned Additional Sessions Judge, Junagadh. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence as according to us, no other conclusion is possible except the one reached by the learned Additional Sessions Judge, Junagadh on the facts and in the circumstances of the case.

37. No new argument is advanced. No new criticism is offered. No infirmity in the reasoning of the learned Additional Sessions Judge , Junagadh is pointed out. The evidence has been carefully analyzed and fully appreciated in the closely reasoned

judgment with which we fully concur. We do not think it right to invest more time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of brevity.

38. In the aforesaid view of the matter, according to us, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Junagadh.

39. On the wakeup of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the learned Additional Sessions Judge, Junagadh and hence, the appeal lacks merit and deserves to be dismissed.

40. For the foregoing reasons, we find no substance in this appeal and accordingly it is dismissed.

(A. M. KAPADIA, J.) (K. A. PUJ, J.)

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